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STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 1 ON THE PROGRESS OF WORK IN THAT COMMISSION

Programme of work

1. As recommended by its Bureau, Special Commission 1 adopted its programme of work for the current session as follows: (a) the plenary of the Special Commission would consider the working paper prepared by the Secretariat on international commodity agreements or arrangements, and any other matters delegations wished to discuss; (b) the Ad Hoc Working Group of the Special Commission mandated to deal with certain "hard-core" issues would continue its deliberations; and (c) the Chairman's Negotiating Group established by the Special Commission during the ninth session at Kingston would commence its work, concentrating on the provisional conclusions of the deliberations of the Special Commission since its inception.

Meeting schedule

2. During the session, the Special Commission held four meetings. In order to accommodate an additional meeting of the Training Panel, the Special Commission agreed, with a view to facilitating the work of the Preparatory Commission, to let the time allocated to it for one meeting be utilized by the Training Panel. The time for another meeting was fully allocated to the Ad Hoc Working Group and the Contact Group of the Group of 77 on Special Commission 1 Matters.

3. The Ad Hoc Working Group of the Special Commission met three times, sharing meeting time with the Special Commission. The Chairman's Negotiating Group had four meetings. The Bureau of the Special Commission met twice.

I. WORK OF THE PLENARY OF THE SPECIAL COMMISSION

Consideration of working paper on commodity agreements

4. At the request of the Special Commission, the Secretariat prepared, for the current session, a working paper on international commodity agreements or arrangements, contained in document LOS/PCN/SCN.1/WP.14. In relation to the protection of developing countries from adverse effects on their economies or on their exporting earnings resulting from seabed production, the United Nations Convention on the Law of the Sea refers, in article 151 (1), to international commodity agreements or arrangements through which the International Seabed Authority could take measures necessary to promote the growth, efficiency and stability of markets for those commodities produced from the minerals derived from the international seabed area, namely copper, nickel, cobalt and manganese. In studying the problems which would be encountered by developing land-based producer States (DLBPS) likely to be most seriously affected by seabed production, with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, the Special Commission thus wished to examine the issue of international commodity agreements or arrangements (ICAs).

5. Working paper 14 outlines the salient features of ICAs, reviews the current trends and developments and describes briefly the ICAs currently in operation. It is to be noted that with respect to the four mineral commodities of particular interest to the Special Commission, in the case of nickel, there is at present an international commodity arrangement in the form of the International Nickel Study Group; in the case of copper, the terms of reference of the International Copper Study Group were adopted in 1989, but the Study Group is yet to come into operation, pending the fulfilment of the criteria for entry into force of the terms of reference; in the case of manganese, intergovernmental efforts, with the participation of producers and consumers, addressing the world manganese situation are under way and may lead to the consideration of an international study group in the future; cobalt is not covered by any existing ICA.

6. Delegations were invited to deliberate on the issue of ICAs, focusing on whether, and to what extent, ICAs could be helpful to DLBPS in the context of their possible problems resulting from future seabed production, and whether the Special Commission could recommend to the Authority that ICAs in the mineral commodities concerned could be promoted.

7. Some delegations emphasized the need for cooperation and participation of major producers and consumers in order for an ICA to succeed, adding that the main reason of the failure of the Sixth International Tin Agreement was not a lack of finance per se, but rather a lack of participation of some important producers and consumers as well as the political inability to adjust the price range downwards. They drew the attention of the Special Commission to some very difficult negotiating history in the Committee on Commodities of the United Nations Conference on Trade and Development (UNCTAD) on the matter of ICAs and the issues being discussed there, which address the criteria for the

establishment and successful operation of ICAs. In view of those problems, they cautioned against undue optimism in respect of the international community being keen about ICAs.

8. Some delegations noted that although commitments on the part of the international community with regard to ICAs seemed to be undiminished, the practical translation of the commitments in terms of the actual establishment and operation of ICAs had not been achieved. They pointed out that the main difficulties with regard to ICAs arose from the fact that ICAs needed to bring together two diametrically opposed interest groups, namely, producers, interested in higher prices, and consumers, interested in lower prices.

9. Some delegations were of the view that seabed mining would be an entirely new element in the mineral markets, and that it was difficult to foresee what conditions would prevail in the mineral markets with the introduction of seabed mining and what role ICAs could play under those conditions. Those delegations added that in view of the difficulties encountered with respect to ICAs, the future of ICAs remained uncertain, and that DLBPS could not rely on ICAs as effective measures to alleviate their problems.

10. Some delegations agreed that the historical experience demonstrated that the anticipated results from ICAs had not materialized, and that developing countries had been most affected by the failure of ICAs. They added, however, that to avoid disruptions in the market both producers and consumers might be interested in stabilized prices, and that there was some possibility that in the future effective ICAs might come into operation, which was perhaps the spirit behind the reference to ICAs in the Convention. In their opinion, although ICAs were very far from being an effective way of solving commodity problems, it would be useful to keep in view the trends and developments with regard to ICAs in the future, because the situation might improve and good results might be obtained.

11. Some delegations pointed out that there were problems not only in concluding ICAs, but also in bringing ICAs into force and effective operation after they were concluded. They also noted the increasing difficulty of concluding ICAs with economic provisions, the only ones, in their view, which by having a relatively direct impact on markets might be helpful to DLBPS. Other delegations agreed and added that because of a lack of cooperation among major consumers and producers ICAs with economic provisions ran a high risk of failure, and such failure affected developing countries most adversely. Other delegations also agreed, adding that although ICAs with commodity development or market transparency objectives might work they were of relatively less assistance to DLBPS.

12. In the view of some delegations, in spite of all the problems, bearing in mind the imperatives of cost-effective utilization of resources, maximum use of all existing measures including ICAs should be sought.

13. Some delegations provided additional information, mostly of a technical nature, in order that the working paper could be further improved and made

comprehensive. They mentioned that many international commodity study groups such as those on copper, nickel, and lead and zinc, respectively, were autonomous bodies outside the aegis of UNCTAD. They pointed out the role of Food and Agriculture Organization of the United Nations (FAO) in ICAs in agricultural commodities. They mentioned currently existing ICAs or international producer-consumer cooperation, for example on wool. They added that the International Copper Study Group was yet to come into operation since the criteria for entry into force of the terms of reference of the Group had not been met to date.

14. It appeared to the Chairman of the Special Commission that delegations tended to agree in general with the concluding remarks of the working paper to the effect that, bearing in mind the problems and prospects of ICAs, the Special Commission and, in the future, the Authority might benefit most by keeping abreast of the developments with regard to ICAs and in due time making further assessments in the context of their own objectives as to the feasibility and effectiveness of ICAs. With respect to the question as to whether the Authority should encourage the establishment of ICAs in the mineral commodities concerned, there did not seem to be any agreement one way or the other.

Other matters

15. Some delegations raised an issue about the Ad Hoc Working Group and the Chairman's Negotiating Group. In their view those Groups, holding closed meetings in conference rooms with limited facilities, including lack of interpretation, hindered the participation of delegations, and the matters being deliberated in those Groups required the participation of all delegations.

16. In response to the concerns of those delegations, it was recalled that the establishment of the above Groups and the way they would function had come about at the decision of the Special Commission itself. The outcomes of the work of the Groups, it was explained, would be brought to the Special Commission so that all delegations in the plenary would be able to deliberate upon them and take decisions. The Ad Hoc Working Group was open to all delegations, and it held its meetings in conference rooms with full facilities, including interpretation in the six official languages of the General Assembly. It was for the sake of economy in the utilization of the resources of the United Nations that the Special Commission had decided that the Chairman's Negotiating Group would hold meetings without calling for interpretation from the Secretariat. However, it was added, the limited composition of that Group was "without prejudice to any member of the Commission presenting its case", and members of the Commission other than the 13 members of the Group had been attending the meetings of the Group which had commenced functioning during the current session, and had been presenting their cases.

17. Nevertheless, efforts would be made to explore possibilities of sharing meeting time and facilities between the Special Commission and the Negotiating Group during the next session.

II. WORK OF THE AD HOC WORKING GROUP

18. The Ad Hoc Working Group of the Special Commission continued its work under the Chairmanship of Mr. Luis Giotto Preval Paez (Cuba) and made considerable progress in its work. Intensive efforts to resolve one of the three issues entrusted to the Group - criteria for the identification of DLBPS actually or likely to be affected by seabed production - seemed to be leading to successful outcomes. The report of the Chairman of the Group is annexed to the present statement.

III. WORK OF THE NEGOTIATING GROUP

19. During the ninth session of the Preparatory Commission, at the decision of the Special Commission, the Chairman's Negotiating Group was established for the purpose of carrying out negotiations on the provisional conclusions of the deliberations of the Special Commission which can form the basis of its recommendations to the Authority, and of seeking solutions. Various regional groups and interest groups are represented in this Negotiating Group. The members of the Group are: Algeria, Australia, Canada, Chile, China, Cuba, the European Economic Community (EEC), Japan, Philippines, Poland, Uganda, the Union of Soviet Socialist Republics and Zambia, without prejudice to any member of the Commission presenting its case. The Group is chaired by the Chairman of the Special Commission. The Group does not have decision-making power; when solutions are agreed upon, the members of the Group take the solutions to their respective constituent groups - regional groups and interest groups - for consideration, to be considered later in the Special Commission.

20. During the current session, the Chairman's Negotiating Group commenced its work. As mandated, the Group concentrated on the provisional conclusions. It may be recalled that the Chairman of the Special Commission had in that capacity put forward his suggestions on the provisional conclusions in document LOS/PCN/SCN.1/1989/CRP.16, which were later revised in document CRP.16/Rev.1, containing 17 provisional conclusions and two annexes. During the ninth session, two groups of delegations, EEC and its member States and the Group of 77, submitted amendments to the provisional conclusions; they are contained in documents LOS/PCN/SCN.1/1991/CRP.20/Rev.1 and CRP.21, respectively. The work of the Negotiating Group was carried out, as an initial attempt, on the basis of the above three documents, since they address the whole range of provisional conclusions. However, the positions and proposals of other groups of delegations and individual delegations have been expressed in the deliberations of the Special Commission and of the Ad Hoc Working Group during the past sessions. Positions and proposals with regard to certain central issues, if not the whole range of issues, were also presented in various documents: LOS/PCN/SCN.1/WP.8 contains the position and proposals by the Group of Eastern European socialist countries; LOS/PCN/SCN.1/1985/CRP.6 and CRP.17 contain those of Pakistan; and LOS/PCN/SCN.1/1985/CRP.7 contains those of Zimbabwe. All of these positions, proposals and documents were also under consideration in the Negotiating Group.

21. It should be noted that the whole range of provisional conclusions include certain "hard-core" issues which have been entrusted to the Ad Hoc Working Group of the Special Commission. At the outset, it was agreed that the Negotiating Group would defer consideration of those provisional conclusions which are directly linked with the work of the Ad Hoc Working Group, pending the outcomes of the work of the latter group.

22. It was agreed that, as an initial exercise, the Negotiating Group would proceed provisional conclusion by provisional conclusion with a view to (a) identifying areas of agreement, (b) identifying areas of disagreement and, most importantly, (c) in the latter cases, seeking underlying concerns, interests and efforts to accommodate positions of others beneath the apparent surface divergences. It was the hope and commitment of all the members of the Negotiating Group that some compromise solutions could be built upon these underlying understandings. As a logical corollary of this approach, it was agreed that at the time no detailed drafting would be attempted.

23. The Chairman is happy to report that during the current session the above exercise of the Negotiating Group has progressed from provisional conclusion 1 to provisional conclusion 10, and most significantly, the search for finding a basis for solutions is bearing fruit in many instances. It gives him great pleasure to mention the spirit of understanding and cooperation and, above all, the solution-seeking efforts of all the members of the Negotiating Group. He wishes to express his sincerest appreciation to them, and to all the members of the Special Commission for their support of the work of the Negotiating Group.

IV. FUTURE WORK

24. It may be recalled that the Special Commission had identified a wide range of topics which it needed to study in order to fulfil its mandate efficiently. All but one of those topics have been studied in an extensive manner, in most cases, on the basis of working papers prepared by the Secretariat. For the next session the Special Commission, through the Preparatory Commission, would like to request the Secretariat to prepare a working paper on the remaining topic, namely, projection of future supply-demand-price of copper, nickel, cobalt and manganese. In preparing the working paper, the Secretariat should coordinate with the Chairman's Advisory Group on Assumptions of Special Commission 2 with a view to avoiding any duplication of work.

25. During the next session, the Special Commission will study the topic of projection on the basis of the above working paper and will deal with any other matters delegations wish to raise. The Ad Hoc Working Group will continue its deliberations on the issues entrusted to it. The Chairman's Negotiating Group will continue its work on the provisional conclusions.

Annex

REPORT OF THE CHAIRMAN OF THE AD HOC WORKING GROUP OF SPECIAL COMMISSION 1

Consideration of LOS/PCN/SCN.1/1991/CRP.18/Rev.2

1. During the current session, the Group needed almost all of the limited time available to it to try to resolve the issue of the identification of developing land-based producer States (DLBPS) actually or likely to be affected by seabed production. The Group considered the revised suggestions put forward by the Chairman of the Ad Hoc Working Group on this issue in CRP.18/Rev.2.

2. Some delegations stated that they were encouraged by the revised suggestions and expressed their feeling that the resolution of the issue was close. They felt that the figures for dependency thresholds and trigger thresholds specified in CRP.18/Rev.2 were reasonable. They suggested that the term "justify" in paragraph 2 (c) should be replaced by "prove". They also expressed the difficulties raised for them by the "forecasts" mentioned in paragraph 3 (b). They added that the role of the Economic Planning Commission mentioned in paragraph 5 was under discussion in the Chairman's Negotiating Group. In this context, they pointed out that the suggestions being considered in the Working Group and the provisional conclusions under consideration in the Negotiating Group were interrelated.

3. Some delegations felt that the figures for dependency thresholds were still too high. They also felt that the way the matter of categorization was dealt with in paragraph 2 (c) with respect to DLBPS that might encounter special problems was too restrictive.

4. In the view of some delegations, the idea of applying criteria was not in the Convention and any restrictions would be contrary to the provisions of the Convention providing for assistance to DLBPS. They expressed their preference for the Authority to deal with applications from DLBPS on a case-by-case basis. On the other hand, other delegations emphasized that the criteria were necessary; otherwise, the Authority might be burdened with an unduly large number of applications, which could jeopardize its ability to assist DLBPS in an efficient and cost-effective manner. They added that the provision for dealing with DLBPS with special problems on a case-by-case basis, as contained in paragraph 2 (c), could be viewed as a "safeguard" provision which might address the concerns of other delegations.

5. Some delegations expressed the view that since seabed mining would not take place in the foreseeable future, the specification of any concrete criteria would be premature. Without a methodology to isolate the effects of seabed production from those of other factors, concrete criteria could not be established. They also maintained that the objective basis of establishing the criteria should be clearly spelt out.

6. Some delegations questioned the basis on which the figures in CRP.18/Rev.2 had been specified. In their view, the figures were heavily biased by those in the European Economic Community's System for Minerals (SYSMIN). They emphasized that other organizations, including the United Nations and the World Bank, might be able to provide information that could form the basis for different figures.

7. In the assessment of the Chairman, certain modifications might facilitate the acceptance of the suggestions by delegations. To this end, it is his intention to incorporate the following modifications and to present a third revision of CRP.18 at the next session:

(i) Since it appears that the main problem is with regard to the figures, the figures would be viewed as merely indicative. The Authority, in due time, could determine the definitive figures;

(ii) As an indicative figure, only 10 per cent would be mentioned in paragraph 2 (a);

(iii) Paragraph 2 (b) could be deleted, because too many categories are confusing and unnecessary. In any case, the reason these various categories were considered originally was to relate them to DLBPS which are actually or likely to be affected, seriously affected or most seriously affected; such determination would result from the in-depth investigation addressed in the provisional conclusions;

(iv) Paragraph 2 (c) could be redrafted to take into account the concerns of delegations;

(v) Paragraph 3 (b) could be retained to accommodate the cases of DLBPS likely to be affected by seabed production;

(vi) Paragraph 5 could be deleted since there was no strong support from delegations;

(vii) Certain drafting changes could be made in some paragraphs to make them clearer in meaning.

Consideration of LOS/PCN/SCN.1/1991/CRP.19/Rev.2

8. In spite of time constraints, the Group had an opportunity to exchange views with regard to the revised suggestions on assistance measures for DLBPS, contained in CRP.19/Rev.2.

9. Some delegations stated that the revised suggestions were acceptable to them. Some other delegations however expressed the problems they had in accepting the suggestions, emphasizing that many of them ran counter to their basic principles with regard to protection of DLBPS, compensation and the role of the Authority. They also added that most of the matters addressed in CRP.19/Rev.2 were related to the provisional conclusions being dealt with in the Chairman's Negotiating Group.

10. Since the issues dealt with in the Working Group are interrelated with many of the provisional conclusions under consideration in the Chairman's Negotiating Group, it is the feeling of the Chairman of the Working Group that an effective way of integrating the outcomes of the work of the Working Group with that of the Chairman's Negotiating Group needs to be found. Efforts to that end would be made in the next session.

Consideration of LOS/PCN/SCN.1/1989/CRP.15

11. As discussed at the last session, consideration of the issue of the effects of subsidized seabed mining, addressed in CRP.15, would be postponed to the next session pending the outcomes of the Uruguay Round of Negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).

Future work

12. The Ad Hoc Working Group will continue its deliberations during the next session, with a view to completing its work at that session.